

MINUTES

**SUPREME COURT’S ADVISORY COMMITTEE ON THE
UTAH RULES OF APPELLATE PROCEDURE**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Judicial Council Room
Thursday, June 2, 2016
12:00 p.m. to 1:30 p.m.

PRESENT

Joan Watt- Chair
Troy Booher
Paul Burke
Marian Decker
R. Shawn Gunnarson
Alan Mouritsen
Judge Gregory Orme
Adam Pace – Recording Secretary
Rodney Parker
Bridget Romano
Clark Sabey
Lori Seppi
Tim Shea-Staff
Ann Marie Taliaferro
Judge Fred Voros
Mary Westby

EXCUSED

1. Welcome and approval of minutes

Joan Watt

This is Mr. Shea’s last meeting because he is retiring. The committee thanked him for his service. Ms. Watt then invited a motion to approve the minutes from the May meeting.

Mr. Parker moved to approve the May minutes. Mr. Booher seconded the motion and it passed unanimously.

2. Priority of Pending Issues

Tim Shea

Mr. Shea presented a list of pending issues to be discussed in future meetings, with suggested levels of priority for the order in which they should be addressed. Judge Voros commented that

the proposed amendment to Rule 14 would not take much time to discuss. It was discussed and resolved at the end of the meeting (see notes on other business below).

Mr. Shea reported that the e-filing system is still delayed, and will not be complete anytime in 2016. The committee discussed the status of the e-filing amendments, and whether any of them should be adopted before the e-filing system is complete. Mr. Parker asked Mr. Shea to prepare a memorandum with his recommendations. Mr. Burke made a motion to refer this issue to the e-filing subcommittee to meet no more than twice about it and then decide how to proceed. He also moved that as changes to the rules are made going forward, the e-filing amendments that have not yet been adopted should be updated so they are current when the time comes to implement them. Mr. Booher suggested that it would be most efficient to have the e-filing subcommittee keep the amendments updated.

Mr. Burke's motion was seconded by Mr. Parker, and it passed unanimously.

3. Rule 4(f) motion to reinstate the time to appeal

Tim Shea

The committee continued its discussion of whether to recommend imposing a time limit on motions to reinstate the period for filing a direct appeal in criminal cases under Rule 4(f). Mr. Shea reported his research that showed there were 5 cases since 2010 where these motions were filed. Ms. Westby commented that more motions were probably filed, but they may have been titled differently and so would not be included in the search results. She said that if a time limit is imposed, a two-year limit would be better than one year. Ms. Decker recommended imposing a one or two-year time limit. Ms. Watt opposed imposing a time limit. Judge Voros said he thought a time-limit should not be imposed, but if it is, that the court should warn the defendant about it at sentencing. At the conclusion of the discussion, Mr. Parker made a motion for the committee to recommend that no change be made to Rule 4(f).

Mr. Parker's motion was seconded by Mr. Booher. The motion passed, with Ms. Decker and Ms. Romano opposed.

4. Criminal Records in PCRA cases. URCP 65C.

Tim Shea

Mr. Shea proposed making a recommendation to the civil rules committee that it amend Utah R. Civ. P. 65(c) to say that all records in a criminal case under review are part of the trial court record in a PCRA appeal. This issue came up during the last discussion on electronic filing rules, and how to link to the record of a case that is not on appeal, such as in PCRA cases. The committee agreed with this proposal, and Mr. Shea said he would raise it with the civil committee.

5. Rule 25A. Challenging the constitutionality of a statute or ordinance BR/TB/SG/CS

Ms. Romano reported the subcommittee's recommendations on the new proposed Rule 25A requiring parties to serve their briefs on the Attorney General (or the county or municipal attorney, as the case may be) if a party challenges the constitutionality of a statute or ordinance. Mr. Burke suggested that the addresses for service should be stated in the rule itself, rather than in the advisory committee note. The committee discussed the proposed language in subpart (a)(5) and agreed to revise it to say that "If a party does not serve a brief as required by this rule, *and supplemental briefing is subsequently ordered as a result of that failure*, a court may order that party to pay the costs, expenses, and attorney fees of any party affected by that failure. The committee also agreed that all references in the rule to "ordinance" should be revised to say "*county or municipal ordinance*."

Ms. Romano moved to recommend adopting the rule with the proposed revisions. Mr. Gunnarson seconded the motion and it passed unanimously.

Ms. Romano also suggested that the criminal rules committee should consider a similar amendment.

6. Rule 37 Suggestion of mootness; voluntary dismissal **Judge Voros**

Discussion of this issue was tabled until the next meeting.

7. Rule 40. Attorney's or party's certificate; sanctions and discipline. **Tim Shea**

Mr. Sabey suggested that the references to "discipline" orders in the proposed Rule 40 should be changed to say "disciplinary" orders. Mr. Shea agreed to make this change. Further discussion of this issue was tabled until the next meeting.

8. Other Business

Judge Voros proposed revising Rule 14, subpart (a) to say "When a statute provides for judicial review or appeal to the Supreme Court or Court of Appeals..." in place of the current language which says "When judicial review by the Supreme Court or the Court of Appeals is provided by statute..." He explained this language needs to be clarified because there are some statutes that refer to appeals of administrative decisions, even though the court normally refers to them as petitions for review.

Mr. Gunnarson moved to recommend adopting this change to Rule 14. Mr. Burke seconded the motion and it passed unanimously.

9. Adjourn

The meeting was adjourned at 1:34 p.m. The next meeting will be held on September 1, 2016.